

may provide any such required equity in the form of a letter of credit.

§ 242.24 Initial operating costs.

In the case of a new hospital or a hospital expansion, HUD shall establish, on a case-by-case basis, the amount of initial operating capital, if any, that must be deposited in cash or a letter of credit (or combination) to be available to the new hospital upon commencement of operations. Generally, the initial operating capital other than AMPO shall not be borrowed funds unless HUD determines that there are offsetting financial strengths to compensate for the risk associated with borrowing.

Subpart C—Mortgage Requirements

§ 242.25 Mortgage form and disbursement of mortgage proceeds.

(a) *Mortgage form.* The mortgage shall be:

(1) Executed on a form approved by HUD for use in the jurisdiction in which the property covered by the mortgage is situated; the form shall not be changed without the prior written approval of HUD.

(2) Executed by an eligible mortgagor.

(b) *Disbursement of mortgage proceeds.* The mortgagee shall be obligated, as a part of the mortgage transaction, to disburse the principal amount of the mortgage to (or for the account of) the mortgagor or to his or her creditors for his or her account and with his or her consent.

§ 242.26 Agreed interest rate.

(a) The mortgage shall bear interest at the rate or rates agreed upon by the mortgagee and the mortgagor.

(b) The amount of any increase approved by HUD in the mortgage amount between initial and final endorsement in excess of the amount that HUD had committed to insure at initial endorsement shall bear interest at the rate agreed upon by the mortgagee and the mortgagor.

§ 242.27 Maturity.

The mortgage shall have a maturity not to exceed 25 years from the date amortization begins.

§ 242.28 Allowable costs for consultants.

Consulting fees for work essential to the development of the project may be included in the insured mortgage. Allowable consulting fees include those for analysis of market demand, expected revenues, and costs; site analysis; architectural and engineering design; and such other fees as HUD may determine to be essential to project development. Fees for work performed more than 2 years prior to application are not allowable. Fees for work performed by any party with an identity of interest with the proposed mortgagor or mortgagee are not allowable.

§ 242.29 Payment requirements.

The mortgage shall provide for payments on the first day of each month in accordance with an amortization plan agreed upon by the mortgagor, the mortgagee, and HUD.

§ 242.30 Application of payments.

All payments to be made by the mortgagor to the mortgagee shall be added together and the aggregate amount thereof shall be paid by the mortgagor each month in a single payment. The mortgagee shall apply each payment received to the following items in the following order:

(a) Premium charges under the contract of mortgage insurance;

(b) Ground rents, taxes, special assessments, and fire and other hazard insurance premiums;

(c) Interest on the mortgage; and

(d) Amortization of the principal of the mortgage.

§ 242.31 Accumulation of accruals.

(a) The mortgage shall provide for payments by the mortgagor to the mortgagee on each interest payment date of an amount sufficient to accumulate, in the hands of the mortgagee one payment period prior to its due date, the next annual MIP payable by the mortgagee to HUD. Such payments

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shall continue only so long as the contract of insurance shall remain in effect.

(b) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize the ground rents, if any, and the estimated amount of all taxes, water charges, special assessments, and fire and other hazard insurance premiums, within a period ending one month prior to the dates on which the same become delinquent. The mortgage shall further provide that such payments shall be held by the mortgagee, for the purpose of paying such items before they become delinquent. The mortgage shall also make provision for adjustments in case such estimated amounts shall prove to be more, or less, than the actual amounts so paid therefore by the mortgagor. Notwithstanding the foregoing, in particular circumstances, a mortgagor may purchase required fire and hazard insurance through a consortium of affiliated institutions or related organizations or, in the case of public institutions, through required state purchasing arrangements. In such circumstances, the mortgage accrual requirement may be modified to reflect circumstances in which it is inappropriate for the mortgagee to collect monthly payments and to make payments on behalf of the mortgagor.

§ 242.32 Covenant against liens.

The mortgage shall contain a covenant against the creation by the mortgagor of any liens against the property, except for such liens as may be approved by HUD.

§ 242.33 Covenant for malpractice, fire, and other hazard insurance.

The mortgage shall contain a covenant binding the mortgagor to maintain adequate liability, fire, and extended coverage insurance on the property. The mortgage shall also contain a covenant binding the mortgagor to maintain adequate malpractice coverage. All coverage shall be acceptable to the mortgagee and HUD.

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§ 242.35 Mortgage lien certifications.

At initial and/or final endorsement of the mortgage note, each of the following requirements must be met:

(a) The mortgage is the first lien upon and covers all of the property used in the operation of the entire hospital;

(b) The property upon which the improvements have been made or constructed and the equipment financed with mortgage proceeds are free and clear of all liens other than the insured mortgage and such other secondary liens as may be approved by HUD;

(c) The Security Agreement and Uniform Commercial Code filings establish a first lien on the personalty of the mortgagor, including but not limited to equipment acquired with mortgage proceeds or otherwise not subject to a prior lien;

(d) The mortgagor has notified HUD in writing of all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction or rehabilitation of the project, or the purchase of the equipment financed with mortgage proceeds.

§ 242.37 Mortgage prepayment.

(a) *Prepayment privilege.* Except as provided in paragraph (c) of this section or otherwise established by HUD, the mortgage shall contain a provision permitting the mortgagor to prepay the mortgage in whole or in part upon any interest payment date, after giving the mortgagee a 30-day notice in writing in advance of its intention to so prepay. The 30-day notice may be extended with the prior written approval of HUD.

(b) *Prepayment charge.* The mortgage may contain a provision for such charge, in the event of prepayment of principal, as may be agreed upon between the mortgagor and the mortgagee, subject to the following:

(1) The mortgagor shall be permitted to prepay up to 15 percent of the original principal amount of the mortgage in any one calendar year without any such charge.

(2) Any reduction in the original principal amount of the mortgage resulting from the certification of cost, which HUD may require, shall not be